

In the Matter of )  
TENNECO COMMUNICATIONS CORPORATION )  
Request for Waiver to Permit Permanent )  
Authorization on Developmental Frequencies )

## ORDER

**Adopted: January 28, 2000**

**Released: January 31, 2000**

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

## I. INTRODUCTION

1. Tenneco Communications Corporation (TCC) has requested a waiver of Section 90.35(e)(2) of the Commission's Rules<sup>1</sup> to convert its developmental licenses into regular five-year licenses.<sup>2</sup> For the reasons set forth below, we grant the request.

## II. BACKGROUND

2. TCC has been licensed<sup>3</sup> to use certain 10 kHz "sliver" channels in the 30 MHz band,<sup>4</sup> which pursuant to Section 90.35(e)(2) are designated for developmental operations,<sup>5</sup> at various locations in Massachusetts, New York, New Jersey, Pennsylvania, and Ohio.<sup>6</sup> TCC uses these facilities to perform supervisory control and data acquisition (SCADA) functions in connection with El Paso Energy Corporation's Tennessee Gas Pipeline system.<sup>7</sup>

<sup>1</sup>47 C.F.R. § 90.35(e)(2) (formerly 47 C.F.R. § 90.65(e)(2)).

<sup>2</sup>Letter from R.C. Nation, TCC, to Terry L. Fishel, Chief, Land Mobile Branch (filed Feb. 25, 1997) (Waiver Request). The Waiver Request was placed on public notice on September 27, 1999. *See* Wireless Telecommunications Bureau Seeks Comment on Tenneco Communications Corporation Request for Waiver to Permit Permanent Authorization on Developmental Frequencies, *Public Notice*, DA 99-186 (WTB PSPWD rel. Sept. 27, 1999). We received no comments in response to this Public Notice.

<sup>3</sup>TCC sought a waiver with respect to Call Signs WNCX690, WNDK510, WNEC782, WNEC774, WNEC778, WNFU711, WNRC879, WNRZ356, WNVD226, WPAF943, and WPIH848. We note, however, that the FCC's licensing records indicate that the licenses for Call Signs WNEC782, WNEC774, WNFU711, WNVD226, and WPAF943 subsequently expired or were canceled.

<sup>4</sup>Stations WNDK510, WNEC782 and WPHI848 use frequency 30.565 MHz, and the others use frequency 37.005 MHz.

<sup>5</sup>47 C.F.R. § 90.35(e)(2); *see also* 47 C.F.R. §§ 90.501-90.517.

<sup>6</sup>Waiver Request at 1.

<sup>7</sup>*Id.* at 2.

According to TCC, this gas metering function is essential to ensure that the proper amount of gas is in the pipeline and to aid in the detection of leaks or ruptures.<sup>8</sup>

3. TCC states that it decided to use 30 MHz band sliver frequencies to meet its SCADA requirements because the spectrum allocated for this purpose was either congested or unavailable in the requisite areas.<sup>9</sup> TCC explored the possibility of using frequencies in the 928/952 MHz bands designated for Multiple Address Systems (MAS), but found them ill-suited to the terrain and distances involved, and largely unavailable in the desired locations.<sup>10</sup> TCC rejected using 450-470 MHz frequencies allocated for fixed operations on a secondary basis,<sup>11</sup> because of potential interference to primary users and because the supply of frequencies was depleted in many of the same areas where no MAS channel pairs were available.<sup>12</sup> TCC also explains that “splinter” frequencies in the 150-174 MHz band were unsuitable due to potential interference to primary users or, for those frequencies allocated for fixed operations on a primary basis, due to unavailability.<sup>13</sup> Finally, TCC states that, frequencies in the 72-75 MHz band cannot be used in much of its service area<sup>14</sup> due to the requirement that no harmful interference be caused to the reception of Television Channels 4 and 5.<sup>15</sup>

4. In addition, TCC argues that, because there is only one other entity authorized to use 30 MHz band sliver frequencies, granting its waiver request would not deplete the availability of the sliver frequencies or preclude other interested entities from obtaining developmental licenses to use these frequencies.<sup>16</sup> Finally, TCC argues that the instant request for waiver is in the public interest because it would enable TCC to continue using the 30 MHz band sliver frequencies to perform critically important natural gas pipeline SCADA operations.<sup>17</sup>

### III. DISCUSSION

5. We may grant a request for waiver when (i) the underlying purpose of the rules(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>18</sup> We find that TCC has satisfied the first standard for grant of a waiver.

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<sup>8</sup>*Id.*

<sup>9</sup>*Id.*

<sup>10</sup>*Id.* at 3.

<sup>11</sup>*See* 47 C.F.R. § 90.261(a).

<sup>12</sup>Waiver Request at 3.

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

<sup>15</sup>*See* 47 C.F.R. § 90.257(a)(2).

<sup>16</sup>Waiver Request at 3-4.

<sup>17</sup>*Id.*

<sup>18</sup>*See* 47 C.F.R. § 1.925(b)(3)(i)-(ii).

6. The underlying purpose of the rules would not be frustrated by granting the waiver. Section 90.35(e)(2) is intended to promote developmental use of the 30 MHz band sliver frequencies.<sup>19</sup> Because there is only one other entity licensed to use the 30 MHz band, we believe that there is currently ample spectrum available for other entities to pursue developmental operations on these frequencies. Therefore, we agree with TCC that the rule's purpose will not be frustrated by granting it a permanent authorization for the subject frequencies. In addition, we conclude that granting this waiver is in the public interest, because it will enable TCC to continue to perform its natural gas pipeline SCADA operations without interruption. We are concerned that requiring TCC to obtain authorization on other frequencies for such operations at this time, particularly in light of its showing that it lacks access to alternative frequencies, could impair the quality and effectiveness of TCC's operations and the safety of the general public in the vicinity of such operations. Therefore, we will waive Section 90.35(e)(2) and authorize TCC to use its frequencies on a permanent basis.

7. We also will waive the requirement that TCC's transmitters be certificated for use under Part 90.<sup>20</sup> TCC formerly was not subject to this rule, because transmitters used in developmental operations are exempt from the Part 90 type acceptance requirement.<sup>21</sup> Because the subject frequencies are allocated only for developmental operations, we believe that enforcing the type acceptance requirement would severely limit TCC's equipment options or delay operations until appropriate equipment is type accepted.

8. Finally, we remind TCC that, because applications for developmental licenses are not subject to frequency coordination requirements,<sup>22</sup> if additional parties wish to operate on the 30 MHz band sliver frequencies, TCC's operations may incur interference and TCC would be subject to accept such interference. However, because frequencies in the 30 MHz band are sparsely used, we do not expect this to be a problem.

#### IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i) and Sections 1.925 and 90.35(e)(2) of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.35(e)(2), TCC's waiver request filed on February 25, 1997 is GRANTED with respect to Call Signs WNCX690, WNDK510, WNEC778, WNRC879, WNRZ356 and WPIH848, and its developmental licenses will be MODIFIED as set forth herein.

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<sup>19</sup>See 47 C.F.R. § 90.7.

<sup>20</sup>See 47 C.F.R. § 90.203(a).

<sup>21</sup>47 C.F.R. § 90.203(b)(1).

<sup>22</sup>47 C.F.R. § 90.175(i)(4).

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau